IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24-7-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.19914, 32409 of 2004, 10577 of 2005

W.P.No.19914 of 2004

A. Neppolian ... Petitioner

Vs.

1. The Chief Engineer (Personnel)
The Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai - 600 002.

2. The Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Cuddalore District. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the entire records connected with the impugned order in letter No.126512/1638/G8/G81/karu,119/2002-1 dated 25.4.2003 passed by the first respondent and quash the same and direct the respondents to consider the claim of the petitioner and provide any suitable post to him on compassionate grounds.

W.P.No.32409 of 2004

T.Manikandan ... Petitioner

Vs.

1. The Chief Engineer (Personnel)
The Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai - 600 002.
2. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tirunelveli District. ... Respondents

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This writ petition has been filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the entire records connected with the impugned order in letter No.503/Karu,86/Ni.Pe2(2)/ Ko.VA.Ve/02-5 dated 30.10.2002 and consequential order in letter No.649/Karu.86/Ni.Pe2(2)/Ko.VA.Ve/02-7 dated 8.1.2003 passed by the second respondent and quash the same and direct the respondents 1 and 2 to consider the claim of the petitioner and provide any suitable post to him on compassionate grounds.

W.P.No.10577 of 2005

J. Karthik ... Petitioner

Vs.

1. The Chief Engineer (Personnel)
   The Tamil Nadu Electricity Board,
   No.800, Anna Salai,
   Chennai - 600 002.

2. The Superintending Engineer,
   Chennai Electricity Distribution Circle,
   Chennai-34. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the entire records connected with the impugned order in letter No.0040204/98/Ni.Pe.2/Ue.2/Ko.Varisu.Velai/2004-1 dated 20.5.2004 passed by the second respondent and quash the same and direct the respondents to consider the claim of the petitioner and provide any suitable post to him on compassionate grounds.

For Petitioners : Mr.S.N.Ravichandran

For Respondents : Mr.M.Vaidyanathan

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O R D E R

In these writ petitions, respective petitioners have challenged the order of rejection of their claim for compassionate appointments, by the Tamil Nadu Electricity Board.

2. In all these cases, petitioners/legal heirs of the deceased Tamil Nadu Electricity Board employees applied for compassionate appointment and the same were rejected by the impugned orders stating that the applications having been made

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after three years and as per the Board regulations they were not entitled to get appointments on compassionate ground.

3. Heard the learned counsel appearing for the petitioner as well as the learned counsel for the respondents.

4. Admittedly in all these cases, applications for compassionate appointment have not been made within three years due to the reason that the petitioners/legal heirs of the deceased employees have not attained the age of 18 years/the claimant is not qualified to any post. Therefore second applications have been submitted by the petitioners/qualified persons after attaining the age of 18 years, which cannot be treated as fresh applications made beyond three years from the date of death of the deceased employees.

5. Similar issues were decided by this Court against the respondents in the following cases.

(a) By order dated 9.3.2001 in W.P.No.13802 of 2000, the Hon'ble Mr.Justice D.Murugesan allowed similar writ petition and the same is reported in 2001 WLR 601 (D.Ramadoss v. The Chief Engineer, T.N.E.B.). Paragraph 4 of the said order reads thus,

> "4. I have considered the rival submissions of the respective counsel. It is not in dispute that the appointment on compassionate ground is governed by the guidelines prescribed by the Board, by way of Board's proceedings. Before the Board's proceedings made in B.P.Ms.(PB) No.46 (Adm.Branch) dated 13.10.1995, there was no minimum period prescribed within which the application for compassionate appointment has to be made. However, only under the above said circular, the minimum period of three years was prescribed and that too in case of already expired staff, the dependant can apply within three years from the date of issue of the order. In this case, the petitioner has applied for compassionate appointment on 18.6.1997 well within the period of three years. In the judgment of the Apex Court relied upon by the learned Counsel for the respondent, there is no minimum period prescribed for appointment on compassionate ground and the Supreme Court while considering the application has held that there cannot be a request for compassionate appointment after a

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lapse of ten years. However, in this case, by vistas of Board's proceedings dated 13.10.95, the respondent has prescribed the minimum period of three years for the dependants to apply for employment assistance of the staff already expired, from the date of issue of the said order. When the applicants like the petitioner have been given the period of three years to make such a request, the petitioner's request which was made on 18.6.97 is well within the period of three years as per the above circular and therefore the same cannot be rejected on the ground of delay of 19 years. In that the view of the matter, I do not find any justification in rejecting the request of the petitioner only on the sole ground of delay of 19 years. Accordingly, the impugned order of the respondent is set aside. However, the respondent is directed to consider the request of the petitioner for appointment on compassionate ground on merits with reference to the circular which are in force for appointment on compassionate ground including the Board's proceedings No.46 (Adm.Branch) dated 13.10.1995 within a period of two months from the date of receipt of the copy of this order."

(b) In W.P.No.24225 of 2001 (S.Karthikeyan v. T.N.E.B. and others), the Hon'ble Mr.Justice K.P.Sivasubramaniam, by order dated 1.2.2002, set aside similar order and allowed the writ petition.

(c) In W.P.No.8154 of 2002 (A.Govindan v. The Chief Engineer (Personnel), TNEB, Chennai and another), the Hon'ble Mr.Justice N.V.Balasubramaniam, by order dated 9.4.2002 allowed similar writ petition with a direction to treat the application submitted as within the time.

(d) The Hon'ble Mr.Justice P.D.Dinakaran by order dated 23.9.2003 in W.P.No.19673 of 2003 (J. Jayakaran v. The Superintending Engineer, Theni Electricity Distribution Circle, Theni) allowed the writ petition and directed the TNEB to pass orders granting compassionate appointment. Paragraph 5 in the said order reads as under,

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"It is true that when an application was made for employment of the petitioner, i.e., on 23.5.2002, the petitioner was only a minor, but not qualified. But he had attained majority on 2.6.2003 and therefore, the respondent Board, having kept the application of the petitioner for employment on compassionate ground under consideration, ought to have considered the case of the petitioner for suitable employment without rejecting the same on technical reason, by the impugned order dated 18.6.2003. Since B.P.No.146 dated 13.10.1995 prescribes only a maximum period of three years for consideration of the application for appointment on compassionate ground, the respondent shall consider the request of the petitioner for employment on compassionate ground and pass appropriate orders within twelve weeks from the date of receipt of copy of this order, if the petitioner is otherwise qualified for suitable post."

(e) The Hon'ble Mr.Justice K.Govindarajan, by order dated 31.10.2003 in W.P.No.12907 of 2003 (B.Malliga v. The Superintending Engineer, Coimbatore Electricity Distribution Circle, Coimbatore) allowed similar writ petition and the relevant portions of the said order reads thus,

"3. Though the applications were made within the said period of three years, the same were rejected as the legal heirs of the deceased were not attained the age of 18. While considering the similar issue, D.Murugesan, J., in the decision reported in 2002 (4) LLN 1132 (P.RAVI vs. CHIEF ENGINEER (P), T.N.E.B.) found that when a request was made by filing an application within three years, the subsequent request cannot be considered as one made beyond the period of three years, as the same was not made for the first time beyond the period of three years after the demise of the father of the petitioner. On that basis, the learned Judge directed the respondents to consider the petitioner's request for appointment on merits.

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4. Following the said Judgment, the impugned order is set aside and the matter is remitted back to the first respondent to consider the petitioner's request on merits and pass orders within a period of two months from the date of receipt of copy of this order."

(f) In the decision reported in 2004 (3) CTC 120 (T.Meer Ismail Ali v. The Tamil Nadu Electricity Board) the Hon'ble Mr.Justice F.M.Ibrahim Kalifulla passed similar orders. The writ appeal filed against the said order in W.A.No.4008 of 2004 was dismissed by the First Bench of this Court on 1.12.2004 and SLP No.6387 of 2005 filed before the Honourable Supreme Court was also dismissed on 4.4.2005.

(g) I have also allowed similar writ petitions and one of which is reported in (2006) 2 MLJ 200 (Selvi R.Anbarasi v. Chief Engineer (Personnel), TNEB, Chenai and another). Paragraph 5 of the said order reads thus,

"In view of the settled law, the impugned order is quashed and the respondents are directed to issue compassionate appointment order to the petitioner as per her qualification within a period of six weeks from the date of receipt of copy of this order."

6. In view of the series of decisions made by this Court as referred above and taking note of the stand taken by the Honourable Supreme Court and by this Court sustaining the claims of the petitioners and the same having been implemented by the respondents, the impugned orders are set aside with a direction to the respondents to give compassionate appointment to the petitioners in the above writ petitions based on their qualifications, within a period of six weeks from the date of receipt of copy of this order.

With the above direction, the writ petitions are orders. No costs.

vr

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chief Engineer (Personnel), Tamil Nadu Electricity Board, No.800, Anna Salai, Chennai - 600 002.

2. The Superintending Engineer, Cuddalore Electricity Distribution Circle,Cuddalore District.

3. The Superintending Engineer, Tirunelveli Electricity Distribution Circle, Tirunelveli District.

3 ccs to Mr.M.Vaidyanathan, Advocate, SR.32521, 32522, 32524
3 ccs to Mr.S.N.Ravichandran, Advocate, SR.32500

hpr (co)

dv/25.7.06

W.P.No.19914 of 2004 etc., batch

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